IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 21797 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOHAMMAD ARIF @ SHAMPOO IQBALBHAI KURESHI - Petitioner(s)

Versus

STATE OF GUJRAT & 2 - Respondent(s)

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Appearance :

MR HR PRAJAPATI for Petitioner(s) : 1,MR MR PRAJAPATI for Petitioner(s) : 1,
RULE SERVED BY DS for Respondent(s) : 1 - 2.
GOVERNMENT PLEADER for Respondent(s) : 3,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 21/12/2005

ORAL JUDGMENT

1. Mohamad Aarif @ Shampoo Iqbalbhai Kureshi-petitioner has filed this habeas corpus petition under Article 226 and 227 of the Constitution of India

challenging order of detention dated 04.10.2005 passed by Police Commissioner, Ahmedabad city under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 (for short 'PASA Act') which is illegal, null, void and also violative of Article 14, 19, 21 and 22 of the Constitution of India. The present petition was filed on 21.10.2005 and this Court issued RULE on 26.10.2005 which was made returnable after four weeks and that is why this matter has come up before this Court for hearing and final disposal.

2. Heard, Mr. Prajapati, learned Advocate for the petitioner and Mr. Pujari, learned A.G.P. in this behalf. Mr. Prajapati, learned Advocate for the petitioner has invited my attention to the order of detention and committal order dated 04.10.2005 by which petitioner-detenu was arrested and sent to District Jail, Surat.

3. Learned Advocate for the petitioner has further invited my attention to the grounds supplied in the order of detention. As the grounds of detention four criminal cases have been shown as registered

against the petitioner detenu. First offence is registered as being C.R. No.59/05 at Gomtipur Police Station dated 21.04.2005 punishable under the provisions of Section 379 of the Indian Penal Code. In that case it was alleged that the detenu committed theft of one Hero Honda 'Splendour' motorcycle valued at Rs.20,000/-. Second offence is registered as being C.R. No.123/05 at Gomtipur Police Station dated 11.07.2005 punishable under the provisions of Section 379 of the Indian Penal Code. In that case it was alleged that the detenu committed theft of one Hero Honda motorcycle valued at Rs.25,000/-. Third offence is registered as being C.R. No.307/05 at Maninagar Police Station dated 13.07.2005 punishable under the provisions of Section 379 of the Indian Penal Code. In that case it was alleged that the detenu committed theft of one 'Bajaj' scooter valued at Rs.5000/-. In connection with that case the authority recovered one engine of scooter valued at Rs.3000/-. Fourth offence registered as being C.R. No.3017/05 at D.C.B. Police Station dated 20.09.2005 punishable under the provisions of Section 25.1A,B, 27 and 29 of the Arms Act. In connection with that case, the authority

seized two country made revolvers valued at Rs.5000/-, fifteen cartridges of .32 valued at Rs.750/-, seven country made 'Tamancha' valued at Rs.14,000/- and fifteen cartridges of 'Tamancha' valued at Rs.750/-.

4. Learned Advocate for the petitioner further stated that in the order of detention it was stated that the petitioner-detenu is carrying on anti-social activities and on the basis of four offences registered against the petitioner-detenu he was termed as 'Dangerous Person' within the meaning of Section 2(c) of the PASA Act. It was also stated that as said anti-social activities of the detenu are dangerous and affecting maintenance of 'public order' and 'public health', order of detention has been passed.

5. Learned Advocate for the petitioner has further stated that the three offences which are registered against the detenu are punishable under Section 379 of the Indian Penal Code and the fourth offence is punishable under Section 25.1A,B, 27 and 29 of the Arms Act, therefore, there was no need to resort to drastic remedy provided under the provisions of the

PASA Act terming the detenu as 'Dangerous Person'. In support of this learned Advocate for the petitioner has placed reliance on the judgment of the apex Court in the case of Piyush Kantilal Mehta Vs. Commissioner of Police, Ahmedabad City & Another reported in AIR 1989 SC 491. Learned Advocate for the petitioner has also placed reliance on Division Bench judgment of this Court in L.P.A. No.1139 of 1999 (Coram: Acting C.J., C.K. Thakkar & K.M. Mehta, J.) decided on 04.10.1999 in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat & Others reported in 2000 (1) GLH 393. He has also placed reliance on the judgment of this Court (Coram: H.K. Rathod, J.)in the case of Naresh alias Lalo Babubhai Vs. State of Gujarat and Others reported in 2002(1) GLH 528 and also recent judgment of this Court (Coram: K.M.MEHTA, J.) dated 16.11.2005 in the case of Gulamkadar alias Kadarbapu Gulamhussain Aafridi(Pathan)in S.C.A. No.20399 of 2005.

6. Heard, Mr. Pujari, learned A.G.P. for respondent-detaining authority and he has filed affidavit-in-reply of one Mr. K.R. Kaushik, Police Commissioner, Ahmedabad city in this behalf and has

tried to defend the order of detention as well as grounds stated therein.

7. In view of the aforesaid facts and circumstances of the case, this Court is of the view that in this case only material remains is four criminal cases registered against the detenu and on the basis of that it cannot be said that activity of the detenu has become a threat to the maintenance of 'public order' and 'public health'.

8. I have heard learned Counsels for both the parties and after perusal of the record, I am of the view that the detaining authority has passed the order of detention without there being any credible or cogent material on record in this behalf. I have also considered factual and legal aspects emerging from the record of the petition and considered the rival submissions and the facts of the case and also judgment of the apex Court in the case of Piyush Kantilal Mehta(Supra) and also Division Bench judgment of this Court in the case of Ashokbhai Jivraj(Supra) and another judgment of this Court in the case of

Naresh alias Lalo Babubhai(Supra) and also recent judgment of this Court in the case of Gulamkadar alias Kadarbapu(Supra). In view of the facts and circumstances of the present case and also ratio laid down in the cases mentioned above, the order of detention cannot be sustained and deserves to be quashed and set aside.

9. In the result, this petition is allowed and order of detention dated 04.10.2005 passed by Police Commissioner, Ahmedabad city is hereby quashed and set aside. Mohamad Aarif @ Shampoo Iqbalbhai Kureshi-detenu is, therefore, ordered to be set at liberty forthwith if he is not required in connection with any other case by the authority. Rule is made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.

(K.M.MEHTA,J.)

Umesh/-